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OFFICE OF PETITIONS

In re Application of
Rascon
Application No. 10/668,712
Filed: September 23, 2003
Attorney Docket No. 4615
For: RETENTION APPARATUS AND METHOD
FOR STABILIZING CONCRETE FORMS

ON PETITION

This is a decision on the petition under 37 CFR 1.137(a), filed on June 12, 2006 (certificate of mailing date June 11, 2006).

The petition under 37 CFR 1.137(a) is **DISMISSED**.

Any further petition to revive the above-identified application must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Petition under 37 CFR 1.137(a)." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application became abandoned for failure to timely reply to the Notice of Allowance and Fee(s) Due, mailed February 16, 2006, which set a non-extendable three month period for reply. No timely reply being received, this application became abandoned on May 17, 2006. A Notice of Abandonment was mailed on June 23, 2006.

A grantable petition to revive an abandoned application under 37 CFR 1.137(a) must be accompanied by (1) the required reply, unless previously filed; (2) the petition fee as set forth in § 1.17(l) (\$250.00); (3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable; and (4) a terminal disclaimer, if required.

Any revival petition under 37 CFR 1.137 must be accompanied by the petition fee. The payment of a petition fee to obtain the revival of an abandoned application is a statutory prerequisite to revival of the abandoned application, and cannot be waived.

The phrase "[o]n filing" in 35 U.S.C. § 41(a)(7) means that the petition fee is required for the filing (and not merely the grant) of a petition under 37 CFR 1.137. See H.R.Rep. No. 542, 97th Cong., 2d Sess. 6 (1982), *reprinted in* 1982 U.S.C.C.A.N. 770 ("[the fees set forth in this section are due on filing the petition]"). Accordingly, the Director is statutorily precluded from further review of the petition until the petition fee is paid in full.

A review of Office records indicates that petitioner has paid a \$700.00 issue fee, a \$110.00 terminal disclaimer fee, and a \$55.00 petition fee. Since a terminal disclaimer is not required in this case, the money that would have been applied to the terminal disclaimer fee will be applied towards the \$250.00 petition fee. Therefore, petitioner owes \$85.00.

The petition under 37 CFR 1.137(a) is dismissed.

Petitioner is urged to submit the \$85.00 balance due for the petition under 37 CFR 1.137(a). The merits of the instant petition will not be addressed until the petition fee is paid.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITION
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand: U.S. Patent and Trademark Office
Customer Service Window, Mail Stop Petition
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By FAX: (571) 273-8300 - ATTN: Office of Petitions

Telephone inquiries pertaining to this matter may be directed to the undersigned at (571) 272-3230.



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